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# REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIFTH INSTALMENT OF CLAIMS FOR DEPARTURE FROM IRAQ OR KUWAIT (CATEGORY "A" CLAIMS)

GE.95-64634

## INTRODUCTION

1. This report contains the recommendations to the Governing Council of the Panel of Commissioners (the "Panel") appointed to review claims for departure from Iraq or Kuwait ("category 'A' claims") pursuant to article 37(e) of the Provisional Rules for Claims Procedure (the "Rules"),[1] concerning the fifth instalment of claims[2] submitted to the Panel by the Executive Secretary of the United Nations Compensation Commission (the "Commission"). Category "A" claims are claims for departure from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991.[3] Category "A" claims are among the "most urgent claims" for which the Governing Council's Decision on "Criteria for Expedited Processing of Urgent Claims" (S/AC.26/1991/1) has set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief".

2. The first three reports issued by the Panel made recommendations with respect to 348,645 category "A" claims out of a total of more than 900,000 such claims registered with the Commission. The recommendations for the first three instalments of category "A" claims were mainly made on the basis of the expedited procedure provided by article 37 (a) of the Rules, i.e., verification by matching against information in the secretariat's computerized database. As stated in its fourth report, which covered 217,513 more claims, the Panel proceeded to the second phase of verification using the expedited procedure provided by article 37(b) of the Rules, i.e., checking individual claims on the basis of sampling.

3. The 217,520 claims contained in the fifth instalment have been verified on the basis of the sampling methodology. The legal principles and issues underlying the sampling methodology, the status of this methodology under international law and various national jurisdictions, and the sampling methodology as such are discussed in the fourth report.

4. The Panel held a preparatory meeting with the secretariat of the Commission on 14 to 17 March 1995 to discuss the methodology and procedures used by the secretariat in the processing of the fourth and fifth instalment of category "A" claims and to organize the work of its substantive sessions. The Panel thereafter held three substantive sessions to review claims in the fourth and fifth instalments from 29 to 31 May, 10 to 13 July and 30 August to 1 September. The Panel held a meeting to finalize this report from 30 to 31 October 1995.

## I. COMPOSITION OF THE FIFTH INSTALMENT OF CATEGORY "A" CLAIMS

5. In determining the total number of claims and the country-wise composition that would comprise the fifth instalment of category "A" claims, the Panel took into consideration the suggestion made by the Governing Council at its seventeenth session to the effect that the fourth and fifth instalments of category "A" claims should be submitted to the Council for approval at its October and December 1995 meetings, respectively. The Panel's recommendations as set out in paragraph 10 of this report are made according to such criteria and procedures, as elaborated below.

6. In general terms, the sampling results as determined by the Panel were applied, on a country-by-country basis, to all of the claims that had not been recommended for payment in the first, second or third instalments. Approximately 50 per cent of all of the claims that were verified by the Panel through sampling were included in the fourth instalment that was approved by the Governing Council in Decision 31 [S/AC.26/Dec.31 (1995)]. The remaining 50 per cent of the claims verified by sampling make up this fifth instalment of category "A" claims, bringing the total number of claims determined by the Panel to 783,678.

7. Certain claims that the Panel determined should be reviewed individually are not included in either this or the fourth instalment and will be considered when the final instalment of category "A" claims is processed (see paras. 82 and 83 of the fourth report). Also excluded from both this and the fourth instalment are claims identified as possible duplicates (see para. 41 of the fourth report) and those with a defective format that, after further review, will be considered when the final instalment is processed.

## II. RECOMMENDED COMPENSATION FOR THE FIFTH INSTALMENT OF CATEGORY "A" CLAIMS

8. Pursuant to article 37(e) of the Rules, the Panel hereby presents its recommendations on the claims comprising the fifth instalment of category "A" claims.

9. Having considered the results of the verification of claims accomplished through sampling and further having considered all relevant circumstances and materials available with the Commission, the Panel recommends for payment of compensation 217,520 claims submitted by 60 countries and by the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). The total recommended amount of compensation for the fifth instalment comes to US$784,076,500.00.[4]/

10. The following summary table lists on a country-by-country basis the number of claims for which payment is recommended and the total recommended amount of compensation. A table containing the breakdown of the amounts to be paid to each individual claimant will be provided to each respective country.

| Country | Number of Claims Recommended for Payment | Amount of Compensation Recommended(US$) |
|---|---|---|
| Algeria | 4 | 19,500.00 |
| Australia | 16 | 76,000.00 |
| Bahrain | 5 | 15,500.00 |
| Bangladesh | 13,543 | 52,372,500.00 |
| Bosnia and Herzegovina | 882 | 3,532,000.00 |
| Brazil | 1 | 5,000.00 |
| Bulgaria | 417 | 1,890,000.00 |
| Canada | 93 | 407,000.00 |
| China | 1,424 | 5,716,000.00 |
| Croatia | 8 | 33,000.00 |
| Cyprus | 1 | 2,500.00 |
| Czech and Slovak Federal Republic*/ | 104 | 455,000.00 |
| Denmark | 2 | 5,000.00 |
| Egypt | 75,576 | 217,074,000.00 |
| Ethiopia | 55 | 224,000.00 |
| Federal Republic of Yugoslavia (Serbia and Montenegro) | 901 | 3,818,500.00 |
| Finland | 5 | 23,000.00 |
| France | 30 | 133,500.00 |

*/ These claims were submitted before the Czech and Slovak Federal Republic ceased to exist. Awards of compensation will have to be paid to the Governments of the Czech Republic and the Slovak Republic, respectively, pursuant to an agreement between the two Governments.

| Country | Number of Claims Recommended for Payment | Amount of Compensation Recommended(US$) |
|---|---|---|
| Germany | 10 | 37,000.00 |
| Ghana | 3 | 12,000.00 |
| Greece | 5 | 28,500.00 |
| Hungary | 22 | 107,000.00 |
| Iceland | 1 | 4,000.00 |
| India | 37,508 | 145,908,500.00 |
| Iran (Islamic Rep. of) | 708 | 4,502,000.00 |
| Ireland | 36 | 117,000.00 |
| Italy | 53 | 179,500.00 |
| Japan | 187 | 778,000.00 |
| Jordan | 3,845 | 17,416,000.00 |
| Kenya | 1 | 2,500.00 |
| Korea, Republic of | 402 | 1,005,000.00 |
| Kuwait | 8,317 | 39,897,500.00 |
| Lebanon | 1,565 | 3,923,000.00 |
| Malaysia | 2 | 10,000.00 |
| Mauritius | 1 | 4,000.00 |
| Morocco | 32 | 105,500.00 |
| Nepal | 70 | 283,500.00 |
| Netherlands | 5 | 26,500.00 |
| Pakistan | 6,016 | 23,213,500.00 |
| Philippines | 7,778 | 31,112,000.00 |
| Poland | 915 | 3,738,500.00 |
| Romania | 1,354 | 3,548,000.00 |
| Russian Federation | 2,021 | 8,312,000.00 |
| Senegal | 4 | 23,500.00 |
| Somalia | 144 | 467,500.00 |

| Country | Number of Claims Recommended for Payment | Amount of Compensation Recommended(US$) |
|---|---|---|
| Sri Lanka | 18,154 | 72,551,500.00 |
| Sudan | 10,196 | 38,661,000.00 |
| Sweden | 10 | 38,500.00 |
| Switzerland | 1 | 2,500.00 |
| Syria | 7,492 | 26,823,500.00 |
| Thailand | 2,652 | 10,563,000.00 |
| The former Yugoslav Republic of Macedonia | 239 | 967,500.00 |
| Tunisia | 91 | 338,500.00 |
| Turkey | 1,805 | 6,547,500.00 |
| Ukraine | 2 | 8,000.00 |
| United Kingdom | 367 | 1,316,500.00 |
| United Rep. of Tanzania | 13 | 49,000.00 |
| United States | 178 | 838,500.00 |
| Vietnam | 6,209 | 24,840,000.00 |
| Yemen | 5,858 | 29,195,000.00 |
| UNDP (Jerusalem) | 15 | 71,500.00 |
| UNDP (Washington) | 12 | 59,500.00 |
| UNDP (Yemen) | 3 | 10,500.00 |
| UNHCR (Bulgaria) | 1 | 8,000.00 |
| UNHCR (Canada) | 13 | 63,000.00 |
| UNHCR (Geneva) | 5 | 18,500.00 |
| UNRWA (Vienna) | 132 | 541,000.00 |
| Total | 217,520 | 784,076,500.00 |

11. The Panel reiterates its concern for the destitution and suffering endured by a great number of claimants, descriptions of which were contained in many of the personal statements attached to the sample claims reviewed by the Panel. The Panel again urges that all efforts be made to find resources to effect the prompt payment of compensation approved by the Governing Council so as to provide meaningful relief as expeditiously as possible.

Geneva, 31 October 1995

(Signed) Kamal Hossain
Chairman

(Signed) Matti Pellonpää
Commissioner

(Signed) Rafael Rivas-Posada
Commissioner

Notes

1/ S/AC.26/1992/10. Article 37(e) requires that "[e]ach Panel will report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be allocated to each Government or other entity for each consolidated claim. Each report will briefly explain the reasons for the recommendations and, to the extent practicable within the time-limit, contain a breakdown of the recommendations in respect of individual claims within each consolidated claim".

2/ The recommendations concerning the first instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)" (S/AC.26/1994/2) (hereinafter referred to as the "first report"). General information regarding the establishment of the United Nations Compensation Commission in the aftermath of the Gulf crisis as well as the composition of the Panel are contained in the introduction to the first report. The recommendations concerning the second instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)" (S/AC.26/1995/2). The recommendations concerning the third instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)" (S/AC.26/1995/3). The recommendations concerning the fourth instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of Claims for Departure from Iraq or Kuwait (Category "A" claims)" (S/AC.26/1995/4) (hereinafter referred to as the "fourth report").

3/ For a more detailed description of the nature of category "A" claims, the Claim Form "A" and the amounts that can be claimed under this category, reference is made to Part I of the first report.

4/ On the basis of the considerations formulated in Part IV.C.3. of the first report, the Panel reiterates its recommendation that interest should be paid on the awarded amounts in category "A" claims in accordance with the Governing Council Decision on "Awards of Interest" (S/AC.26/1992/16). The Panel reiterates its opinion that the phrase "the date the loss occurred" in Decision 16 should be interpreted to be a single date for all category "A" claims and that the date of invasion, 2 August 1990, should serve as the fixed date.

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